

1 defendants elicited this information from multiple witnesses. It was admitted over
2 plaintiffs' objections for a limited purpose, i.e. to show the reason for the non-
3 shooting officers' actions. Despite this specific limitation on the admission,
4 defendants repeatedly argued these items for the truth of the matter. Further,
5 defense counsel misstated the extent of Walb's knowledge by conflating the
6 statements of officers who were at a briefing Walb never attended, with Walb's
7 more limited information based on a cursory roadside briefing by Sgt. Ramsay.
8 The hearsay evidence was inadmissible because the reasons for the non-shooting
9 officers' actions are not in issue, and the prejudice of such information is unduly
10 prejudicial under FRE 403.

11 There is an additional basis for this renewed motion. Defendants' counsel
12 chose to repeatedly impugn plaintiffs' counsel's honesty before the jury, often in
13 ways that were entirely misleading and unfair. One example was with respect to
14 the mannequin. Dr. Morhaime testified, outside the presence of the jury, that she
15 had placed two probes in the mannequin to approximate the wound paths of the
16 two back wounds of decedent. Mr. Martini testified that the two probes had been
17 placed by Dr. Morhaime and that they represented the wound paths and were
18 consistent with his understanding. When the mannequin was displayed before the
19 jury in closing argument, defense counsel exclaimed that there was a second probe
20 that had been added after the original showing or words to that effect. This was
21 false. Defense counsel had viewed the mannequin after Dr. Morhaime placed the
22 two probes she had seen it in court during Mr. Martini's testimony. The false
23 imputation of evidence tampering made without any basis constitutes serious and
24 prejudicial misconduct.

25 In her argument, defense counsel faulted plaintiffs' counsel for misleading
26 conduct for displaying the mannequin in a face-down position on the floor, instead
27 of in the angular position of the torso when decedent was shot, again impugning
28 counsel's honesty. The display of the mannequin only in a standing or kneeling

1 position was done because defense counsel had strenuously objected to any display
2 of the mannequin in a kneeling or angular position, allegedly because the
3 mannequin was not the same height as decedent. Plaintiffs' counsel agreed that
4 whenever the mannequin was to be displayed, he would do so with it only in a
5 standing posture perpendicular to the ground or a face down posture on the ground.
6 The colloquy regarding the display only in a standing or face down position took
7 place outside the jury's presence. Knowing this, defense counsel argued that
8 plaintiffs had misleadingly displayed the mannequin in a flat face down posture
9 instead of in the actual position in which decedent was shot. When plaintiffs'
10 counsel objected, the Court overruled the objection.

11 Because the press of court business precluded counsel from explaining this
12 to the Court on the morning of September 1, plaintiffs are filing this written
13 motion.

14 Defense counsel repeatedly engaged in forensic misconduct. Despite the
15 Court's repeated admonitions not to do so, defense counsel argued over and over
16 her personal opinions and beliefs regarding evidentiary matters, issues of witness
17 credibility, issues of character, the qualifications and honesty of expert witnesses,
18 and the appropriate verdict in the case. The Court's repeated admonitions to
19 defense counsel and plaintiffs' multiple objections were for naught. Defense
20 counsel ploughed ahead, arguing her personal opinions and beliefs on the specific
21 case issues throughout. Defense counsel's insistence on this improper argument
22 was deliberate misconduct. It has caused substantial prejudice. The plaintiffs have
23 moved for a mistrial on the basis of the misleading attacks on plaintiffs' counsel
24 and the arguments of personal belief and conviction by defense counsel. In the
25 alternative, plaintiffs respectfully request a curative instruction to the jury that the
26 attacks on plaintiffs' counsel were unfounded, and that they are to disregard
27 defense counsel's assertions of personal opinion or belief.
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2 Dated: September 1, 2017

Respectfully submitted,
IREDALE and YOO, APC

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7 Attorneys for Plaintiffs
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